did not shew on the face of it that the application for it was made by the Chairman of the Town Council.

The record showed that the Prosecution was conducted by a Health Inspector. As, however, the Magistrate in his Grounds of Judgment stated that the application for demolition was made by the Chairman of the Town Council, I reserved judgment to enable a report to be obtained as to the circumstances in which this application had been made.

The Magistrate has now reported that at the time he had before him a written application for a demolition order signed by the Chairman of the Town Council and dated 11th January, 1955, which he has forwarded for my perusal. This application should, of course, have been intimated to the accused and a copy of it should have been included in the record of the case forwarded to this Court. It was, however, in existence and before the Magistrate and as the making of the demolition order has not been in any way attacked on its merits I take the view that in all the circumstances of the case the failure of the Magistrate to intimate the existence of the application to the accused is an irregularity which is capable of being cured by virtue of section 422 of the Criminal Procedure Code. The appeal against the order must therefore be dismissed.

Before departing from the case, I would repeat the following observation which I made in *Lee Kie Lie's case*[1] :—

"I take this opportunity, however, of directing the attention of Magistrates to the recently decided case of Lew Yew v. Public Prosecutor[2] where it was held in effect that a Demolition Order under Section 92 of the Town Boards Enactment can only be made on the application of the Chairman of the Town Board concerned or his Deputy. This does not, of course, mean that it is necessary in every case for the Chairman or his Deputy to appear in Court to ask for the Order. It is sufficient if the application has been specifically authorised by the Chairman or his Deputy although it may be actually made by a Sanitary Inspector or some other functionary. It is the duty, however, of the Magistrate to ensure that the law is complied with and in order to satisfy himself in this regard he should require the Prosecuting Officer in every such case to produce written authority for the application signed by the Chairman or his Deputy. To avoid misunderstanding I would add that such an authority should relate in terms to the actual application before the Court and that it would be unsafe to rely on any authority in purely general terms."

Although the point has no real bearing on the present case I must point out that that passage is to be read together with and in the light of the judgment of Bellamy J. which is mentioned. If that is done it will be clear, though it should be clear without so doing, that in using the expression "Deputy" I was referring to a Deputy Chairman of the Town Board or Town Council and not to any delegate of either the chairman or Deputy Chairman.

Appeal dismissed.

CHAN CHUNG HOONG v. CHEOW VOOI PENG

[O. C. J. (Thomson J.) May 17, 1955]
[Ipoh — Civil Suit No. 389 of 1954]

Executors and Fatal Accidents Enactment (Cap. 19), ss. 3 and 4 — Death by negligence — Damages — Action for loss of support — Action for damages to estate — Delay in commencing proceedings — Whether statute barred — Civil Law Enactment, 1937, s. 4 — Administration expenses.

The plaintiff in this case was the administrator of the estate of one Chan Cheok Meng who died on May 7, 1952 as a result of the negligent driving of a motor vehicle by the defendant. He was suing both as administrator and for the benefit of himself as father of the deceased and on behalf of the mother of the deceased for damages to himself and his wife for the loss of support and to the estate of the deceased.

The proceedings were not commenced until October 30, 1954.

S. 4(v) of the Executors and Fatal Accidents Enactment provides that an action for the loss of support shall be brought within 12 calendar months after the death of the deceased person; s. 3 of the same Enactment gives the executor of a deceased person the right to bring an action for any wrong committed in the lifetime of the deceased person which occasioned pecuniary loss to the estate but the exercise of that right is made subject to a period of limitation of one year. But s. 4(i) of the Civil Law Enactment, 1937, provides in general terms that all causes of action vested in a deceased person shall survive for the benefit of his estate.

Held: (1) as s. 4(v) of the Executors and Fatal Accidents Enactment had not been complied with the claim for loss of support was statute barred; (2) s. 4(i) of the Civil Law Enactment, 1937, superseded the provisions of s. 3 of the Executors and Fatal Accidents Enactment, and therefore the claim for damages to the estate in respect of the loss of expectation of life and the claim for funeral expenses were not statute barred.

[**Editorial Note:**— On the question of administration expenses, Thomson J., at the conclusion of the case, in a separate oral judgment said: "I gather from *Bingham's* book on Motor Claims Cases which has been just put before me that it is usual to allow something in this connection in England. I see that something in this connection was recently allowed in Penang and in a previous case in Ipoh I myself allowed $150. I will follow my own previous decision and allow $150."]

ACTION.

S. P. Seenivasagam for the plaintiff.

K. C. Chan for the defendant.

Thomson J. (delivering oral judgment) : — This action arises by reason of the death of one Chan Cheok Meng who died on 7th May, 1952, his death being alleged to have been the result of the negligent driving of a motor vehicle by the defendant on the previous day, that is to say, 6th May, 1952. The plaintiff is the administrator of the estate of the deceased and is suing both as such administrator and for the benefit of himself as father of the deceased and on behalf of the mother of the deceased for damages, in the first place, to the estate of the deceased, and, in the second place, to himself and to his wife by reason of loss of support.

The proceedings were not commenced until 30th October, 1954.

A preliminary point has arisen as to whether or not by reason of the delay in commencing the proceedings the proceedings have become statute barred by reason of sections 3 and 4 of the Executors and Fatal Accidents Enactment (Cap. 19).

Now it is to be observed that there are here two separate causes of action. There is the action for damage to the estate which I shall deal with later and there is the action for loss of support.

As regards the action for loss of support, this was an action that was unknown to the common law of England. It was introduced in England by statute, by what is commonly called Lord Campbell's Act, that is, the Fatal Accidents Act of 1846, and that Act contained a provision restricting the right of action to cases where proceedings were commenced within one year of the act complained of. Section 4 of our Executors and Fatal Accidents Enactment follows the provisions on the point of Lord Campbell's Act. Sub-section (v) provides that every such action, that is, an action for loss of support under the section, shall be brought within twelve calendar months after the death of the deceased person. That has not been complied with here and accordingly so much of the present proceedings as amount to a claim for loss of support is statute barred and I think the correct course for me to take as regards that portion of the proceedings is to strike out the relevant portion of the Plaint.

I now turn to the question of damages to the estate.

In England the common law followed the maxim *actio personalis moritur cum persona* and in actions of tort where the tortious act had resulted in the death of the person wronged, the position was that after the death of the person wronged no action could be brought in respect of the alleged tortious act leading up to his death. That position was modified by statute in the course of the 19th century and the effect of these modifications was re-enacted in 1925 in section 26 of the Administration of Estates Act, 1925, which is probably (I speak with no confidence on the point) the origin of section 3 of our Chapter 19. The relevant portions of that section, however, were repealed by Sub-section (7) of section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934, and section 1 as a whole of that Act is now the law of England on the point.

Now I turn to Malaya. Section 3 of Chapter 19 (which is probably based on section 26 of the English Administration of Estates Act, 1925) gives the executor, which includes by definition the administrator, of a deceased person the right to bring an action for any wrong committed in the lifetime of the deceased person which occasioned pecuniary loss to the estate but the exercise of that right is made subject to a period of limitation of one year. Then in 1937 there was enacted the Civil Law Enactment, section 4 of which reproduced section 1 of the English Act of 1934 with one exception which may or may not be significant. As I have said section 1 of the English Act of 1934 having made the substantive provisions which it did make proceeded to repeal certain portions of section 26 of the English Act of 1925. In our Enactment, however, there is no corresponding provision repealing any portion of section 3 of Chapter 19. That difference does raise a difficulty.

Nevertheless, there is no getting away from it that sub-section (i) of section 4 of our Enactment of 1937 is in perfectly general terms. All causes of action vested in a deceased person shall survive for the benefit of his estate except in the case of certain types of action which we are not here concerned. That is later in date than Chapter 19 and on the ordinary canons of construction feel I am bound to hold that in so far as it is applicable it supersedes the provisions of Chapter 19.

The section contains no special provisions relating to limitation and so I must hold that the only period of limitation applicable is the period under section 6 of the Limitation Ordinance (No. 4 of 1953) which is six years and therefore has no application to the present case.

I should add that in the discussion on the point to which I have listened counsel would seem to overlook the provisions of section 4(ii)(c) of the Civil Law Enactment which enables a claim for funeral expenses to be brought.

By reason of the Enactment it follows, therefore, that in so far as the claim is by the administrator for damages to the estate in respect of the loss of expectation of life it is not statute barred. Neither is it statute barred as regards the question of funeral expenses. I do not propose to deal at this stage with the question of administration expenses and I propose to leave this question open until the conclusion of the case.

Order accordingly.

Solicitors: *S. Seenivasagam & Sons; K. C. Chan.*